

## Message Text

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ACTION L-02

INFO OCT-01 EA-10 ISO-00 CIAE-00 INR-07 NSAE-00 RSC-01

VA-01 EB-07 JUSE-00 /029 W

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R 240813Z JAN 75

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 104

UNCLAS MANILA 1092

PLEASE PASS TO DEPT. OF JUSTICE, FOREIGN LITIGATION UNIT.

E.O. 11652: N/A

TAGS: OGEN, RP

SUBJ: CIVIL LITIGATION: COROLA REALITY CORP. (ROMERO) VS. USG

AS REPRESENTED BY AMB AND VA DIRECTOR

1. ON 13 JANUARY 1975, VA EMPLOYEE INADVERTENTLY ACCEPTED A SUMMONS DELIVERED TO EMBASSY COMPOUND IN ABOVE CASE. COMPLAINT HAD BEEN PREVIOUSLY DELIVERED TO THE EMBASSY IN AN ENVELOPE.

2. PLAINTIFF ALLEGES THAT IT IS THE TRUE OWNER, UNDER A ROYAL SPANISH LAND GRANT, OF THE LAND ON WHICH THE PHILIPPINE VETERANS MEMORIAL HOSPITAL IS NOW SITUATED. HE REQUESTS THE COURT TO ORDER THE DEFENDANTS TO PAY P165-284,784.54 FOR ACCRUED RENTALS AND ARREARAGES FOR THE LAND IN QUESTION. HE ALLEGES, BECAUSE OF VA GRANTS-IN-AID THAT USG PROVIDES GOP, THAT SOMEHOW USG IS OBLIGATED TO PAY RENTAL FOR THE USE OF THE LAND.

3. SUBJECT LAND WAS SET ASIDE BY PHIL PRESIDENTIAL PROCLAMATION IN 1950 FOR PURPOSE OF BUILDING PHILIPPINES VETERANS MEMORAL HOSPITAL. USG HAS NEVER OWNED OR HAD ANY INTERESTS IN THE LAND. A US/RP INTERNATIONAL AGREEMENT SIGNED IN 1949 AGREED THAT GOP WOULD PROVIDE THE LAND AND USG WOULD PROVIDE FUNDS FOR BUILDING THE HOSPITAL WITH TITLE TO HOSPITAL VESTING IN GOP. HOSPITAL CONSTRUCTED IN 1955 WITH GRANT OF \$9,400,000 PROVIDED BY USG (PL 80-865 AND PL 81-266). 1949 AGREEMENT HAS BEEN REVISED AND REWRITTEN EVERY 5 YEARS. CURRENT AGREEMENT IS TIAS 7814.

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4. THIS IS ONE OF THOSE CASES THAT JUST NEVER SEEMS TO GO AWAY IN THE PHILIPPINES. PLAINTIFF INITIALLY FILED SAME LEGAL ACTION DIRECTLY WITH PHILIPPINE SUPREME COURT IN 1974. DOCUMENTS WERE INFORMALLY SENT TO EMBASSY AND THROUGH ADDITIONAL INFORMAL MEANS REPRESENTATIONS WERE MADE WHICH RESULTED IN SUPREME COURT DISMISSING THE SUIT AS WITHOUT MERIT ON 8 MAY 1974. FURTHER ATTEMPT BY PLAINTIFF TO HAVE COURT ENTERTAIN ACTION RESULTED IN AN ORDER BY SUPREME COURT ON DECEMBER 2, 1974 WHICH STATED: QUOTE: COURT RESOLVED TO EXPUNGE THE AFORESAID PLEADING FROM THE RECORDS OF THIS COURT AND TO INFORM PETITIONER THAT RESOLUTION OF MAY 8, 1974 WHICH DISMISSED THE PETITION FOR MANDAMUS IS ALREADY FINAL AND NO FURTHER PLEADING WITH RESPECT TO THIS CASE WILL BE ENTERTAINED. UNQUOTE.

5. THE PLAINTIFF THEN TURNED TO COURT OF FIRST INSTANCE, MANILA AND OBTAINED PERMISSION TO FILE AS A PAUPER. COURT THEN ISSUED SUMMONS ORDERING AMBASSADOR AND VA DIRECTOR IN PHILIPPINES TO ANSWER WITHIN 15 DAYS. SUMMONS WAS IMPROPERLY SERVED ON EMBASSY COMPOUND ON 13 JANUARY 1975.

6. EMBASSY HAS RETURNED SUMMONS AND PRIOR RECEIVED COMPLAINT TO IFA BY DIPLOMATIC NOTE. NOTE POINTED OUT IMPROPER SERVICE BOTH UNDER INTERNATIONAL LAW (INVIOABILITY OF EMBASSY PROPERTY) AND PHILIPPINE LAW (SERVICE ON DIPLOMATIC MISSION MUST BE MADE THROUGH DFA AND FAILURE TO HAVE COMPLAINT ATTACHED). NOTE ALSO REVIEWED HISTORY OF LAND AND BUILDING IN QUESTION AND NOTED THAT USG HAD ABSOLUTELY NO INTERESTS PAST OR PRESENT IN THE LAND AND SUGGESTED MATTER BE REFERRED TO DEPARTMENT OF JUSTICE TO PROTECT GOP INTERESTS.

7. EMBASSY LEGAL OFFICER THEN CONTACTED SOL GEN OFFICE, DEPT. OF JUSTICE AND PROVIDED THEM WITH FILE OF CASE. AT FIRST DEPARTMENT OF JUSTICE ATTORNEYS REQUESTED THAT USG MAKE SPECIAL APPEARANCE TO QUASH SUMMONS. IT WAS EXPLAINED THAT SUIT WAS COMPLETELY SPURIOUS AS FAR AS INVOLVING USG AND IT WAS SUGGESTED THAT DEPARTMENT OF JUSTICE FILE MOTION TO INTERVENE AND TO REQUEST THAT ACTION AGAINST USG BE DISMISSED AND ATTEMPTED SERVICE ON AMBASSADOR AND VA DIRECTOR IN THE PHILIPPINES INVALID AS BEING IMPROPERLY ACCOMPLISHED. IT WAS ALSO EXPLAINED THAT USG POSITION AT THIS TIME WAS THAT WE HAD NOT BEEN PROPERLY UNCLASSIFIED

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SERVED, THEREFORE, ANY APPEARANCE COMPLETELY UNNECESSARY. THE DEPT. OF JUSTICE AGREED AND WILL FILE APPROPRIATE MOTION IN NEXT FEW DAYS.

8. DEPARTMENT OF JUSTICE HOWEVER DID NOT KNOW WHETHER JUDGE WOULD ENTERTAIN THEIR MOTION TO INTERVENE AND THEY MAY REQUEST USG TO MAKE A SPECIAL APPEARANCE AND FILE A MOTION TO QUASH.

9. COMMENT: EMBASSY BELIEVES THAT BETWEEN DIPLOMATIC NOTE  
SUBMITTED TO DFA AND DEPARTMENT OF JUSTICE ACTION THAT CASE  
AGAINST THE USG WILL PROBABLY BE DISMISSED. FURTHER ACTION  
AT THIS TIME BY USG IS NOT DEEMED NECESSARY. EMBASSY WILL  
MONITOR CASE AND KEEP DEPARTMENT INFORMED OF DEVELOPMENTS.  
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